

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 03-2490

United States of America,

Appellee,

v.

Gerardo Rodriguez, also known as
“Gerry,”

Appellant.

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Appeal from the United States
District Court for the District
of Minnesota.

[UNPUBLISHED]

Submitted: March 19, 2004

Filed: March 31, 2004

Before MORRIS SHEPPARD ARNOLD, FAGG, and SMITH, Circuit Judges.

PER CURIAM.

Gerardo Rodriguez pleaded guilty to conspiring to distribute and possess with intent to distribute more than 1,000 kilograms of a substance containing marijuana, in violation of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(A), and 846. The district court¹ sentenced him to 120 months imprisonment and 5 years supervised release. On appeal, his counsel has moved to withdraw and filed a brief under Anders v.

¹The Honorable Joan N. Ericksen, United States District Judge for the District of Minnesota.

California, 386 U.S. 738 (1967), arguing that the government should have filed a downward-departure motion based on Mr. Rodriguez's substantial assistance.

We reject this argument as there is no indication that the government's refusal to file such a motion was based on an unconstitutional motive or was in bad faith. See Wade v. United States, 504 U.S. 181, 185-86 (1992) (defendant must show government's refusal to move for departure was not rationally related to any legitimate government purpose); United States v. Hardy, 325 F.3d 994, 995-96 (8th Cir. 2003) (when government expressly reserves discretion, this court performs only limited review of decision not to file substantial-assistance motion).

Following our independent review of the record, see Penson v Ohio, 488 U.S. 75 (1988), we find no nonfrivolous issues. Accordingly, we grant counsel's motion to withdraw, and we affirm.
